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IN THE
United States Supreme Court
OCTOBER TERM, 1993

GRAYDON L. GIBSON, OLETA GIBSON,
Petitioners,
v.
DALLAS COUNTY EDUCATION DISTRICT,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONERS REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

The petitioners respectfully submit this reply brief in response to the Respondent's Brief in opposition to the petition for a writ of certiorari.

Petitioners have asked this Court to hear this case to require Dallas County Education District, et al, to respond to the Federal Constitution's limitations on a state's retention of admittedly invalid, illegal taxes collected, under duress, by a legislative enactment that is unconstitutional under the State's Constitution.

Respondent's opposition raises an Eleventh Amendment claim of sovereign immunity which is frivolous and without any merit. The opposition brief does not directly address petitioners' arguments for granting this writ, but rather argues, obliquely, general legal principles which have

no application to the applicable Federal Constitutional guarantees which are the reason for granting the writ in this case.

I.

THE ELEVENTH AMENDMENT DOES NOT APPLY

The doctrine of sovereign immunity has no application to this case as the bar of the Eleventh Amendment does not extend to counties and municipal corporations and local school districts. *Mt. Healthy City School District v. Doyle*, 429 U.S. 274, 280 (1977) (Court concluded that a local school district not entitled to assert Eleventh Amendment immunity). The County Education Districts (CED) created by Texas Education Code Sections. 20.941, et. seq., (Resp.Br. p.2) are specifically created as local, independent school districts. Tex. Ed. Code, Sections 20.941 and 20.942. The Eleventh Amendment is not a bar to taxpayers claims in this case.

II.

THE TAX INJUNCTION ACT DOES NOT APPLY

Respondents argument that there is an adequate remedy under the Texas Tax Code to contest the CED tax is incorrect. Respondents have conceded in their factual statement that this case involves an invalid state tax for which the taxpayers could not get any tax refunds for 1991 and 1992 taxes paid. (Resp. Br. pp. 2-3). This Court in *McKesson v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, at 37, (1990), after a full review of constitutional safeguards against such unlawful exactions,

states that the Due Process Clause specifically commands a refund be made under these circumstances. As this Court stated in *American Trucking Assn's v. Smith*. 496 U.S. 167, at 178, 179 (1990):

> When taxpayers involuntarily pay a tax that is unconstitutional under existing precedents, to what relief are those affected taxpayers entitled as a matter of federal law? Our decision in *McKesson* indicates that federal law sets certain minimum requirements that States meet but may exceed in providing appropriate relief.

It is no surprise that respondents' argument makes only unparticularlized references to the existence of "plain, speedy, and efficient remedies" under the Texas Tax Code but nowhere do they provide record citations, statutory citations or otherwise identify this "remedy." No such remedy exists. (*See, Petition For Writ*, p.7).

Respondents' brief fails to respond to this Court's ruling in *Georgia R. Co. v. Redwine*, 342 U.S. 299, 302 (1952) that even a partially adequate state remedy is not enough to deprive the Federal District Court of jurisdiction under the Tax Injunction Act. Petitioners' case is even more egregious. Petitioners have no remedy under Texas law. The Tax Injunction Act does not apply where there are no procedural safeguards under Texas law which protect these taxpayers from having their property taken from them in violation of their due process rights under the Fourteenth Amendment.

III.

MCKESSON CONTROLS

Respondents' argument that *McKesson* is inapplicable and that no federal question is presented here misunderstands and misapplies the Fourteenth Amendment protection this Court has confirmed that the Due Process Clause provides for a states' taxpayers from invalid state taxes. *Harper v. Virginia Dept. of Taxation*, 509 U.S. ___, 125 L.Ed.2d 74, 113 Ct. 2510 (1993) (See fn. 10, 125 L.Ed.2d at 89).

CONCLUSION

The commands of the Due Process Clause of the Fourteenth Amendment and the decisions of this Court enunciating these requirements clearly warrant plenary review and the granting of the writ in this case.

Respectfully submitted,

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